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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

20 CR 15 (PKC)

5 VIRGIL GRIFFITH,

6 Defendant.

7 -----x  
8 New York, N.Y.  
9 January 30, 2020  
2:49 p.m.

10 Before:

11 HON. P. KEVIN CASTEL

12 District Judge

13  
14 APPEARANCES

15 GEOFFREY S. BERMAN  
16 United States Attorney for the  
17 Southern District of New York  
MICHAEL K. KROUSE  
KIMBERLY J. RAVENER  
Assistant United States Attorneys

18 BAKER MARQUART LLP  
19 Attorneys for Defendant  
20 BRIAN E. KLEIN  
KERI C. AXEL

21 KOBRE & KIM LLP  
22 Attorney for Defendant  
SEAN S. BUCKLEY

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(Case called)

MR. KROUSE: Good afternoon, your Honor. Michael Krouse and Kimberly Ravener for the United States.

THE COURT: Good to see you both. And for the defendant.

MR. KLEIN: Good afternoon, your Honor. Brian Klein for Virgil Griffith, who is here and out of custody.

THE COURT: All right, yes. Good to see you, Mr. Klein and I see -- I know Mr. Buckley, who is with you. Good to see you.

MR. BUCKLEY: Good to see you, Judge.

THE COURT: Different perspective.

MR. BUCKLEY: You're a little farther away, your Honor.

THE COURT: And you are.

MS. AXEL: And I'm Keri Curtis Axel, also with the Baker Marquart firm.

THE COURT: Good to see you as well.

MS. AXEL: Thank you.

THE COURT: So, there is a single-count indictment against the defendant which has been filed under docket 20 CR 015. Has the defendant received, read, and reviewed the indictment?

MR. KLEIN: Yes, your Honor.

THE COURT: Is there an application to waive the

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1 public reading thereof?

2 MR. KLEIN: Yes, your Honor.

3 THE COURT: Mr. Griffith, how do you plead to the  
4 single count of the indictment?

5 THE DEFENDANT: Innocent.

6 THE COURT: All right. A plea of not guilty will be  
7 entered on the docket of the court.

8 Let me hear from Mr. Krouse as to the volume of  
9 discovery and when you anticipate having discovery complete.

10 MR. KROUSE: Yes, your Honor.

11 The government has made an initial production of  
12 discovery. We made that production about a week ago,  
13 January 24. That discovery consisted primarily of reports of  
14 the defendant's own statements, various forms of legal process  
15 such as search warrants and an extraction of the defendant's  
16 cellular phone. The government does have another production  
17 that we anticipate providing in about two weeks.

18 THE COURT: Where were the statements and interviews  
19 made?

20 MR. KROUSE: The statements were to the FBI. They met  
21 voluntarily with Mr. Griffith and he made those statements. So  
22 those are reports memorializing those statements.

23 THE COURT: I cut you off. Please keep going.

24 MR. KROUSE: Thank you, your Honor.

25 The second production would consist of additional

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1 search warrants, additional legal process that the government  
2 has conducted as well as the fruits of some of those searches.  
3 The government would also then, after that second production,  
4 there may be additional rolling discovery that would mainly  
5 consist of returns from electronic search warrants which we  
6 have not yet received the returns on.

7 THE COURT: When you say electronic search warrants,  
8 these were Title IIIs?

9 MR. KROUSE: No, your Honor. Mainly stored  
10 communications search warrants on e-mail addresses and things  
11 of that nature.

12 THE COURT: Seems to me, Mr. Klein, that you're going  
13 to need a little bit of time to receive the material, review  
14 the material, discuss it with your client and be in a position  
15 to return to advise me whether there are any motions the  
16 defendant wishes to make in this case; is that correct?

17 MR. KLEIN: That's correct, your Honor.

18 There is an area of discovery I wanted to raise.

19 THE COURT: Yes.

20 MR. KLEIN: We are hopeful, we would like the  
21 government to produce to us, if they have interviewed other  
22 people who attended this conference. So the allegations center  
23 around a conference that was held in North Korea. And the  
24 other attendees, other than our client, were from foreign  
25 countries. We think the government may have interviewed some

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1 of these people or may want to speak to them. And we  
2 anticipate potentially doing Rule 15 -- taking Rule 15  
3 testimony abroad in connection with this case. We think those  
4 other attendees will help exonerate our client. And so it  
5 would be helpful, and we believe necessary, to get FBI 302s or  
6 whatever interviews they've done of those people as soon as  
7 possible so that we can proceed judiciously.

8 THE COURT: Maybe like the government's investigative  
9 file? Is that what you're talking about? You'd like that  
10 maybe?

11 MR. KLEIN: Well I'm focused on this area of it. Yes,  
12 your Honor. Obviously, we'd like the discovery we're entitled  
13 to under Rule 16.

14 THE COURT: That's the question, what you're entitled  
15 to under Rule 16 and what you're entitled to under the Jencks  
16 Act is also a different issue, what you're entitled to under  
17 Brady and Giglio are different issues. But I don't understand  
18 the basis for your getting statements by people who the  
19 government may or may not elect to call as witnesses unless the  
20 statements are exculpatory to your client, in which event the  
21 government has an obligation to produce them under Brady.

22 MR. KLEIN: Your Honor, I understand the issue you're  
23 focused on. I agree we should get all the Brady material, of  
24 course, right. I'm just saying that we anticipate taking  
25 potentially Rule 15 testimony or requesting permission to do

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1 so --

2 THE COURT: Sure.

3 MR. KLEIN: -- with your Honor. And to make that  
4 process more on so we don't have unnecessary delays, if we  
5 could even get a list of people that they've spoken with,  
6 not --

7 THE COURT: Well your client is alleged to have been  
8 at this conference and does he not have access to this  
9 material?

10 MR. KLEIN: He has access to his memory of who was  
11 there, your Honor. They've seized all of his items. They are  
12 producing that back to us. So we're waiting.

13 THE COURT: So you'll get that. And you'll get that.  
14 And if he had notes on a calendar or in an electronic notebook  
15 of who he spoke with, he'll have the benefit of that.

16 MR. KLEIN: So for example, your Honor, what I was  
17 thinking of, let's say they've already spoken to one of these  
18 people and we think, again, they would be providing exculpatory  
19 information. So maybe that would come in a Brady letter or a  
20 Brady disclosure. But I just want to flag this issue for your  
21 Honor, it's something that we're focused on, which is trying to  
22 identify witnesses, pursue our investigation, pursue our  
23 interviews potentially and potentially pursue, make a request  
24 for Rule 15 testimony.

25 THE COURT: Mr. Krouse.

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1 MR. KROUSE: Your Honor, as your Honor pointed out,  
2 the government will obviously comply with its obligations to  
3 produce Rule 16 discovery, will provide Brady and Giglio to the  
4 extent there is any, but there is no basis for the defense to  
5 receive what they're asking for.

6 THE COURT: Mr. Klein, I appreciate your flagging the  
7 issue and certainly if there an application under Rule 15 I  
8 would expect you and encourage you to make it as early as you  
9 possibly can.

10 MR. KLEIN: Yes, your Honor.

11 THE COURT: All right. Would it be convenient,  
12 Mr. Klein, for you to return with your client on March 17 at  
13 3:30 p.m. to advise whether there are any motions you have in  
14 this case?

15 MR. KLEIN: Your Honor, before you came out we  
16 discussed that with the prosecutors. That's a date we  
17 selected, which happens to be St. Patrick's day.

18 THE COURT: I'll well aware.

19 MR. KLEIN: I used to live here and that's a fun day  
20 here in New York. And we'll try to wear green ties.

21 That day seems to work. My phone is checked in  
22 downstairs because I no longer have my pass. So, with the  
23 caveat that I'll doublecheck that, that date is a date we'd  
24 like to be back here, yes, your Honor. We think that gives us  
25 sufficient time to get our discovery, review it, and notify you

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1 at that hearing about motions.

2 THE COURT: All right. And Mr. Krouse does that work  
3 for the government?

4 MR. KROUSE: Yes, your Honor.

5 THE COURT: So I'll set this for March 17, 2020 at  
6 3:30 p.m. and hear Mr. Krouse's motion.

7 MR. KROUSE: Your Honor, the government moves to  
8 exclude time between today and March 17 to allow the government  
9 time to produce the remainder of discovery, allow the defense  
10 time to review it, and determine whether any motions are  
11 appropriate and to allow both sides to discuss possible  
12 pretrial resolutions.

13 THE COURT: Mr. Klein.

14 MR. KLEIN: That's fine with us and our client, your  
15 Honor.

16 THE COURT: All right. I find that the ends of  
17 justice will be served by granting a continuance to March 17  
18 and that the need for a continuance outweighs the best  
19 interests of the defendant and the public. The reasons for my  
20 finding are that the time is needed to enable the government to  
21 assemble the discovery, produce it to the defense, defense  
22 counsel to review it, to discuss it with their client and be in  
23 a position to return to advise if they have any motions they  
24 wish to make and, accordingly, the time between today and  
25 March 17 is excluded under the Speedy Trial Act.



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1 Anything further from the government?

2 MR. KROUSE: Nothing further, your Honor.

3 THE COURT: From the defendant?

4 MR. KLEIN: No, your Honor.

5 THE COURT: All right. Thank you all very much.

6 (Adjourned)

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